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No. 06-1377

FILED
MAY 18 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

CHAGANTI & ASSOCIATES, P.C.,

Petitioner,

v.

THOMAS NOWOTNY AND
ROGER VARDELEON,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

LEWIS, RICE & FINGERSH, L.C.
RICHARD A. AHRENS
(Counsel of Record)
WINTHROP B. REED, III
STEPHEN M. DURBIN
500 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Telephone: (314) 444-7600
Facsimile: (314) 241-6056

Attorneys for Respondents

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QUESTIONS PRESENTED

1. Does a state court complaint transform and become removable without any change in the complaint after a defendant discovers a hidden federal claim?

2. Whether the mere characterization of a claim, without any change in the language of the complaint, makes the state court complaint removable under federal question jurisdiction.

3. Under the "artful pleading" corollary to the "well-pleaded complaint" rule, is a plaintiff under a duty to unmask any hidden federal question in his state court complaint in order to enable removal?

4. Whether the Court of Appeals was correct in using a "clearly erroneous" standard of review instead of a "de novo" review where the district court did not issue findings and conclusions pursuant to Fed. R. Civ. P. 52.

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COUNTER-STATEMENT OF THE CASE

On February 20, 2003, Petitioner Chaganti & Associates, P.C. ("Chaganti") filed a petition in the Circuit Court for St. Louis City, Missouri, alleging that Respondents Thomas Nowotny and Roger Vardeleon interfered with Chaganti's economic advantage, conspired to injure its business, and restrained trade. Pet. App. at 3a. Chaganti's original petition was entitled "Petition for Interference in Business Advantage; Conspiracy to Injure a Business; Unlawful Restraint of Trade." Pet. App. at 6a. The petition made no reference to any federal statute and did not advance any claim that was necessarily based on federal law. *Id.* The only legal citation in the petition referred to a business interference case decided by the Missouri Supreme Court under Missouri law. *Id.*

On March 28, 2003, Respondents timely filed a motion to transfer the case within the Missouri court system to the Circuit Court for St. Louis County, Missouri. Pet. App. at 3a. In its response to Respondents' motion to transfer, filed on April 4, 2003, Chaganti alleged, for the first time, that Respondents had "violated antitrust laws of the United States." *Id.*

Based on this allegation, on April 18, 2003, Respondents filed a Notice of Removal in the United States District Court for the Eastern District of Missouri. *Id.* Chaganti then moved to remand the case to state court on the grounds that removal was untimely, but the district court denied the motion. *Id.*

On appeal, the United States Court of Appeals for the Eighth Circuit affirmed the district court's denial of Chaganti's motion for remand, stating that Respondents "filed their notice of removal within thirty days of the

pleading that first asserted a federal antitrust claim, so the removal was timely, and the district court properly denied [Chaganti's] motion to remand." Pet. App. at 7a.

REASONS FOR DENYING THE WRIT

I. The law regarding removal is clear and well settled, and the opinions of the United States District Court for the Eastern District of Missouri and the United States Court of Appeals for the Eighth Circuit denying Chaganti's motion for remand were consistent with this well-settled body of law.

Under 28 U.S.C. § 1441, any civil action brought in a State court "of which the district courts of the United States have original jurisdiction" may be removed by the defendant to the appropriate United States District Court. Under 28 U.S.C. § 1446(b), if a case is removable based on the initial pleading, a notice of removal must be filed within thirty days after the defendant's first receipt of that pleading. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days of the defendant's first receipt of "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable . . . "

Whether an action is one arising under the laws of the United States under 28 U.S.C. § 1331, and so is one "of which the district courts of the United States have original jurisdiction" under § 1441, is determined by the "well-pleaded complaint" rule. *Louisville & Nashville R.R. v. Mottley,* 211 U.S. 149, 152-153 (1908); *Great Northern Ry.*

Co. v. Alexander, 246 U.S. 276, 281 (1918); *Franchise Tax Bd. v. Laborers Construction Trust*, 463 U.S. 1, 9-10 (1983); *Caterpillar Inc. v. Williams,* 482 U.S. 386, 392 (1987); *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998). Under that rule, whether a claim is federal "must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose." *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914).

The proper application of these principles where a plaintiff files a claim for an alleged unreasonable restraint of trade in a state court has long been settled. States may prohibit restraints of trade, and provide remedies therefore, without preemption by federal antitrust laws. "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies." *California v. ARC Am. Corp.*, 490 U.S. 93, 102 (1989); *accord Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 133-34 (1978). State courts may, and regularly do, exercise jurisdiction over antitrust claims brought under state law. Such claims do not arise under the laws of the United States and are not removable under § 1441 absent diversity of citizenship and the requisite amount in controversy. *See Redwood Theatres, Inc. v. Festival Enterprises*, 908 F.2d 477, 480-81 (9th Cir. 1990); *Blake v. Abbott Labs., Inc.*, 894 F.Supp. 327, 329 (E.D.Tenn. 1995). In contrast, state courts may not exercise original jurisdiction over claims brought under federal antitrust laws, which by operation of statute are exclusively within the jurisdiction of the federal courts. *Marrese v. Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); *Gen. Inv. Co. v. Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 287 (1922).

Missouri has an antitrust statute that prohibits contracts, combinations and conspiracies in restraint of trade, Mo. Rev. Stat. §§ 416.011-161 (2000). Missouri courts also recognize the common law tort of unlawful interference with business advantage. Chaganti's original petition, filed in a state court and making no reference to federal law, related to a largely intrastate dispute over Dr. Chaganti's status on a hospital medical staff. It contained no hint of a federal claim. The parties were all citizens of Missouri. Under the well-pleaded complaint rule, Chaganti's claim did not arise under the laws of the United States and was not removable on the basis of diversity of citizenship. There was no basis for removal at that time.

When Respondents moved for a transfer of venue within the state court system, Chaganti, for the first time, advised the state courts and Respondents that, even though its claim had been brought in a state court, the claim was federal. Chaganti stated that its claim was that Respondents had "violated antitrust laws of the United States."

Contrary to Chaganti's characterization in the first question presented to this Court, this is not a case of a defendant who "discovers a hidden federal claim" that was implicit in a state court petition all along. Rather, this is a case where a plaintiff filed what appeared to all the world to be a state claim, but later announced that the claim was, in fact, federal. Chaganti continues to maintain that the case is federal. *See* Petition for Writ of Certiorari ("Pet.") at 13, describing the claim as "sufficiently federal," having a "substantial federal question," or presenting a "colorable federal claim."

Within thirty days of receipt of Chaganti's statement to the state courts that its claim was, in truth, federal – the statement being the "paper" that triggers a right of removal under these circumstances under 28 U.S.C. § 1446(b) – Respondents timely exercised their statutory right to a federal forum for what had become a federal claim. This is a garden variety removal, and there is no question presented here that is worthy of this Court's attention.

Chaganti invokes a number of doctrines to avoid this obvious result, but none of those doctrines applies here. This response addresses Chaganti's contentions in the order in which they first appear in Chaganti's argument.

A. The *Grable* Rule

In the Summary of Argument, Chaganti invokes the rule of *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). Pet. at 5. In that case, the Court held that there are certain "state-law claims that implicate significant federal issues" and so arise under federal law even if they would not otherwise be "arising under" cases by virtue of the well-pleaded complaint rule. *Grable & Sons*, 545 U.S. at 312. The cases in this class are few. They include cases that present issues significant to the government of the United States, such as the primacy of federal tax liens (the issue in *Grable* itself), and the validity of bonds issued by the United States. *See Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921). There is no comparable overriding interest of the United States at issue here, and Chaganti does not identify any such interest that would warrant extension of the narrow *Grable* rule to cover this case.

B. The Complete Preemption Corollary

Immediately after invoking *Grable*, Chaganti cites three court of appeals decisions, all said to stand for the proposition that "a claim that required an interpretation or application of a federal statute was removable. See *e.g.*, *Anderson v. American Airlines, Inc.*, 2 F.3d 590, 595 (5th Cir. 1993); *Cantrell v. Great Republic Ins. Co.*, 873 F.2d 1249, 1256 (9th Cir. 1989); *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 271 (3rd Cir. 2001)." Pet. at 5. Those cases do not so hold. All three are applications of the complete preemption corollary to the well-pleaded complaint rule, not of the *Grable* rule or of a general rule that any case requiring interpretation of federal law is removable. The claims at issue in those cases were held to be removable or not based on whether the state law claims were completely preempted by federal law and so removable (as they were in *Cantrell* and *Pryzbowski*) or not completely preempted by federal law and so subject to remand (as was the case in *Anderson*).

The preemption doctrine does not apply here, and Chaganti does not assert that it does. In Section I.A. of its argument, Chaganti discusses the complete preemption corollary to the well-pleaded complaint rule (Pet. at 7), which this Court addressed in *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). Under that corollary, a state law claim that is completely preempted by federal law is removable, even if the federal basis for the claim does not appear on the face of the plaintiff's pleading. Chaganti does not argue that complete preemption applies here to convert the state law antitrust claim that it pleaded in its Petition into a federal claim, nor could it. Federal antitrust statutes do not preempt state antitrust statutes. *California v. ARC Am. Corp.*, 490 U.S. at 102; *Exxon*

Corp., 437 U.S. at 133-4. The preemption doctrine affords no help to Chaganti.

C. The Artful Pleading Exception

Chaganti next mentions the "artful pleading" exception to the well-pleaded complaint rule. Pet. at 7. Chaganti returns to the "artful pleading" exception at various places in its argument. *Id.* at 11, 13-14. Under this exception, a plaintiff will not be permitted to file in state court a claim that is wholly federal and thereby omit specific reference to the federal basis of the claim in order to close off the defendant's right to a federal forum. The "artful pleading" doctrine, however, was designed to protect defendants, not to permit plaintiffs to obscure federal claims in state courts until the time for removal has passed. "If a defendant were required to file a notice of removal within 30 days after the service of the initial pleading, even where that pleading did not reveal a ground for removal, he would often be faced with an intractable dilemma of either risking Rule 11 sanctions for noticing removal without making an adequate inquiry or forgoing removal altogether. The statute did not intend to put a defendant to this choice." *Lovern v. Gen. Motors Corp.*, 121 F.3d 160, 163 (4th Cir. 1997). A plaintiff should not therefore be allowed to plead what appears to all intents and purposes to be a state law claim and then, after thirty days from service have elapsed, announce that the claim was federal all along, and contend that it had hidden the federal nature of the claim from the court and the defendant long enough that the defendant had lost its right to invoke a federal forum.

Chaganti cites *Cantrell v. Great Republic Ins. Co.*, 873 F.2d 1249 (9th Cir. 1989) as an "artful pleading" case, (Pet. at 13-14), but it is, in fact, a complete preemption case. 873 F.2d at 1253. The claim there arose from an ERISA plan and was federal because it could only be brought under federal law. The defendants in *Cantrell* knew from the outset that an ERISA plan was involved, and their belated removal was held to be untimely. *Id.* at 1255, n.11. Here, in contrast, Respondents had no knowledge of the assertion of a federal claim until Chaganti so characterized its claim in its filing in opposition to transfer. Respondents removed within thirty days of that filing.

Chaganti asserts that the Eighth Circuit somehow misinterpreted the artful pleading exception. Pet. at 11. While the Eighth Circuit did address the two related exceptions to the well-pleaded complaint rule – complete preemption and the artful pleading rule – in the same paragraph of its opinion, it did not confuse the two. The preemption exception does not apply here because federal antitrust laws do not preempt state law claims, as the Eighth Circuit stated. Pet. App. at 7a. The artful pleading exception does not defeat Respondents' removal rights because it exists to preserve the rights of defendants to a federal forum, and Respondents had no reason to assert their right to a federal forum prior to Chaganti's first description of its claims as federal, again, as stated by the Eighth Circuit. Pet. App. at 6a-7a.

D. Chaganti's Claim That There is a "Substantial Federal Question" Rule Permitting Removal Here

At one point in its Petition, Chaganti asserts that there is a rule of law under which a case involving a

"substantial federal question" that is objectively presented is necessarily removable. Pet. at 7. The decisions Chaganti cites do not stand for such a rule. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986), is explicitly to the contrary. The Court in *Merrell Dow Pharmaceuticals* held that there was no federal jurisdiction notwithstanding the presence of a federal question, since a violation of federal law was alleged to be merely an element of the state court cause of action on which the plaintiffs sued. *Id.* at 814, 817. *Merrell Dow Pharmaceuticals* refutes Chaganti's assertion here that a federal question was presented by its state court petition because the provisions of the Missouri antitrust statutes are to be "construed in harmony with judicial interpretations of federal antitrust laws." Pet. at 12. That federal law may be looked to in adjudicating a state law claim does not mean that the federal claim comes within "arising under" jurisdiction, as *Merrell Dow* holds.

Chaganti next invokes footnote 2 in *Federated Department Stores v. Moitie*, 452 U.S. 394, 397 (1981), as support for its claimed "substantial federal question" rule. Pet. at 8. That footnote was used by lower courts to create an exception to the well-pleaded complaint rule under which removal could properly rest on the alleged preclusive effect of a prior federal judgment. That exception, if it existed, would not apply here because there is no prior federal judgment at issue. In any event, this Court repudiated the exception, and much of the footnote, in *Rivet*, 522 U.S. at 477 ("The *Moitie* footnote, however, was a marginal comment and will not bear the heavy weight lower courts have placed on it.")

The third decision Chaganti cites, *Aldinger v. Howard*, 427 U.S. 1 (1976), was not a removal case at all, but rather

presented the issue of pendent party jurisdiction over third party, non-federal claims in a case originally within the district court's jurisdiction under 42 U.S.C. § 1983. *Id.* at 2. It provides no support for Chaganti in this case.

Elsewhere in its Petition, Chaganti cites *International Ass'n of Machinists, AFL-CIO v. Central Airlines*, 372 U.S. 682 (1963), for the proposition that cases where federal law is "determinative of the merits of the claim" necessarily arise under federal law and so are removable. Pet. at 11-12. That case does not so hold. It involved a Railway Labor Act contract, so that the source of the claim was in a federal statute, making the claim removable. *Central Airlines,* 372 U.S. at 695-9. That was not the case with Chaganti's original state law claim here.

There is no "substantial federal question rule" of the kind Chaganti invokes.

E. The Principle that "Plaintiff is Master of His Claim"

Chaganti invokes the oft-stated principle that the "Plaintiff is master of his complaint." Pet. at 7, 14. If, by this, Chaganti intends to argue that it could have pleaded a state-law only claim, continued to maintain its action on the basis of state law, and so defeated any attempt at removal, Chaganti is correct. That is not, however, what Chaganti chose to do. Rather, Chaganti told the state court that its antitrust claim was federal. As master of its claim, Chaganti invoked a right to relief for alleged violations of the federal antitrust laws. That gave Respondents a right to remove, which they timely exercised.

Chaganti asserts that Respondents had no right to remove because Chaganti did not actually amend its pleading, but merely told the state court and Respondents that its claim was federal. Chaganti argues that "[i]f there was no federal question without any amendment to the complaint, there is no federal subject matter jurisdiction even now." Pet. at 13. *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699 (1972), cited by Chaganti in support of this point, is wholly inapposite; it presents the unrelated question of whether a federal court can retain jurisdiction of an improperly removed case if it is otherwise within federal jurisdiction and no party objects to the removal. *Id.* at 703. The decision in *Oklahoma Tax Commission v. Graham*, 489 U.S. 838 (1989), cited by Chaganti for the same point (Pet. at 10), is likewise inapposite. The Court there applied the well-pleaded complaint rule and concluded that a claim did not become removable simply because a defendant had pleaded a federal immunity as a defense. *Oklahoma Tax Comm'n*, 489 U.S. at 842.

Section 1446(b) states that the basis for removal can become apparent from "an amended pleading, motion, order or other paper." Chaganti's state court filing announcing that it was asserting a federal claim was an "other paper" triggering the right to remove. Had Respondents waited to remove until Chaganti formally amended his pleading to assert what he even now continues to characterize as a "federal" claim (Pet. at 13), Chaganti doubtless would have argued that the removal was too late, because the state court filing had triggered the § 1446(b) thirty-day period.

The instant case is directly analogous to the removal found proper (without an amendment of the complaint) in *Akin v. Ashland Chemical Co.*, 156 F.3d 1030 (10th Cir.

1998). In *Akin*, the plaintiffs filed a toxic tort action, alleging they were injured while working at Tinker Air Force Base. *Id.* at 1035. The defendants learned from the plaintiffs' answers to interrogatories that the plaintiffs were alleging the conduct sued upon took place wholly within the federal enclave and under federal direction. *Id.* at 1035 n.5. After receipt of the interrogatory answers, the defendants removed the suit to federal court. *Id.* The court held that the initial pleading was ambiguous and did not provide unequivocal notice of the right to remove. *Id.* at 1035. Removal was proper because it was made within thirty days of the defendants' receipt of the plaintiffs' interrogatory answers. *Id.* at 1035, 1035 n.4. Just as in *Akin,* Chaganti's original petition failed to provide notice of a federal cause of action, let alone unequivocal notice. The present case was properly removed when the asserted federal nature of Chaganti's claim became apparent.

F. There is No Inter-Circuit Conflict

Chaganti attempts to create a conflict between opinions of the United States Court of Appeals for the Eighth Circuit and the United States Court of Appeals for the Seventh Circuit by contrasting the present case with *In re Brand Name Prescription Drugs Antitrust Litigation,* 123 F.3d 599 (7th Cir. 1997). That case was also one where the Plaintiff filed a state law antitrust claim and the defendants removed. *Id.* at 607. Chaganti argues that "[t]he Eighth Circuit's opinion directly conflicts with that of the Seventh Circuit, which held that when an antitrust plaintiff brought a suit in a state court *under a state antitrust statute that contains substantive provisions similar to that of a federal antitrust statute*, a defendant could remove on the ground that the plaintiff was trying to

bring a federal antitrust suit." Pet. at 12. (Emphasis in original).

Chaganti completely mischaracterizes the decision in *Brand Name.* In the Seventh Circuit case, as here, the plaintiff filed an antitrust claim purportedly based on state law in a state court. Contrary to Chaganti's description of the opinion, the Seventh Circuit did not find the case to be removable as pleaded, but rather held that the case should have been remanded, finding that it was not within the artful pleading exception. *Id.* at 611-613.

There is a crucial factual difference between the two cases which shows that the Seventh Circuit case actually supports the result reached here. Unlike in this case, the plaintiff in *Brand Name* never told the state court that they intended to prosecute a federal claim. If they had, the Seventh Circuit said, it would have made a difference. "[I]f the plaintiff countered by coming out of his state-law closet and acknowledging that he was trying to plead a federal case, the defendant could then remove." *Id.* at 611. That is exactly what occurred here. Chaganti came out of the state-court closet. Respondents removed within thirty days. There is no inter-circuit conflict.

The various federal district court decisions that Chaganti cites are likewise not in conflict with the Eighth Circuit's decision here. Cases like *In re NASDAQ Market Makers' Antitrust Litigation*, 929 F.Supp. 174, 179-80 (S.D.N.Y. 1996), where the district court concluded that plaintiffs had couched essentially federal antitrust claims as state law claims in order to avoid multi-district litigation, and *Buchanan v. Delaware Valley News*, 571 F.Supp. 868, 870-872 (E.D.Pa. 1983), responding to the defendants' proffered grounds of fraudulent joinder by applying the

artful pleading doctrine and concluding that the plaintiff wanted to stay in state court for tactical reasons, have no application here. In each, the Court relied on the now-discredited footnote two in the *Moitie* opinion, discussed above. Both stretched the artful pleading doctrine to its limits. Neither is in conflict with the Eighth Circuit opinion here.

There is no issue related to the removal in this case that would warrant granting Chaganti's Petition.

II. The United States Court of Appeals for the Eighth Circuit did not depart from any precedent in using a "clearly erroneous" standard in reviewing the District Court's order enforcing a settlement agreement between the parties.

In its Petition, Chaganti alleges that the United States Court of Appeals for the Eighth Circuit departed from precedent of this Court in applying a "clearly erroneous" standard in reviewing the District Court's order enforcing a settlement agreement between the parties. Pet. at 15-16. In support of such an argument, Chaganti relies upon *Salve Regina College v. Russell*, 499 U.S. 225, 233 (1991) (Pet. at 15), a case which is entirely inapposite to the facts of this case and which simply does not stand for the propositions advanced by Chaganti. In *Salve Regina College*, the only issue faced by this Court was whether a federal court of appeals should review a district court's determination of state law under a less probing standard than that applied to a determination of federal law, and it ultimately determined that a "court of appeals should review *de novo* a district court's determination of state law." 499 U.S. at 231.

Contrary to Chaganti's argument, a district court's finding that a settlement offer was made and accepted is a factual one which must be reviewed for clear error. *Enterprise Rent-a-Car Co. v. Rent-a-Wreck of Am., Inc.*, 181 F.3d 906, 909 (8th Cir. 1999). Chaganti has not (and cannot) cite to any precedent of this Court or any court of appeals which conflicts with this well-settled statement of law. As such, there is no issue related to the standard of review utilized by the United States Court of Appeals for the Eighth Circuit in reviewing the district court's order enforcing a settlement agreement that would warrant granting Chaganti's Petition.

CONCLUSION

For the reasons more fully set forth herein, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

RICHARD A. AHRENS
(Counsel of Record)
WINTHROP B. REED, III
STEPHEN M. DURBIN

500 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Telephone: (314) 444-7600
Facsimile: (314) 241-6056

Attorneys for Respondents